



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNDL-S, FFL, MNSD

### Introduction

This was a cross application hearing that dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for a Monetary Order for the return of the security deposit, pursuant to section 38.

This hearing also dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for damage or compensation under the *Act*, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties testified that they received the other's application for dispute resolution via registered mail. I find that each party served the other in accordance with section 89 of the *Act*.

### Issues to be Decided

1. Is the tenant entitled to a Monetary Order for the return of the security deposit, pursuant to section 38 of the *Act*?
2. Is the landlord entitled to a Monetary Order for damage or compensation under the *Act*, pursuant to section 67 of the *Act*?

3. Is the landlord entitled to retain the tenant's security deposit, pursuant to section 38 of the *Act*?
4. Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on November 1, 2018 and ended on October 31, 2019. Monthly rent in the amount of \$900.00 was payable on the first day of each month. A security deposit of \$450.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application. The landlord returned \$55.00 from the tenant's security deposit to the tenant on November 13, 2019.

The tenant testified that she posted her forwarding address on the landlord's door on November 14, 2019 and sent a copy via registered mail 15 days later. The landlord testified that she received the tenant's forwarding address in writing but could not recall on what date. The landlord filed her application for dispute resolution on November 29, 2019.

Move in and out condition inspection reports were not entered into evidence. The landlord testified that section 10 of the tenancy agreement states:

The tenants have inspected the premises and find the unit to be in good condition, new laminate flooring, refrigerator, stove microwave, couch, dinette set, cutlery and kitchen wear. During the term of this lease if any repairs are need, the tenant shall notify the landlord immediately and will not try to affect the repairs themselves. All appear to the in good repair except as noted below:

The landlord testified that the tenants did not list any exceptions.

The tenant testified that the landlord did not ask her to complete a joint move in inspection and condition inspection report. Both parties agree that a move out condition inspection report was not completed.

The landlord testified that the tenant left the subject rental property filthy and full of garbage. The landlord entered into evidence a signed letter from her cleaning lady which states:

I was the cleaner for [the subject rental property]. It was a last minute clean.

The suite was a mess.

The stove was caked with food, as well as cupboards. The floors were covered in dirt and food. There was garbage everywhere.

The fridge was gross, food was still in fridge and freezer.

The windows were very dirty as well as the walls.

I notices broken hinges on door as well as a couple pieces of the floor were missing.

The landlord entered into evidence text messages between herself and the cleaner. The cleaner took pictures of the dirty rental property and sent them to the landlord. The photographs were entered into evidence as part of the text message chain. The landlord testified that she is on disability and was not able to view the subject rental property herself. The landlord testified that her cleaner charged her \$40.00 per hour for four hours for a total of \$160.00 to clean the subject rental property. The landlord is seeking to recover this loss from the tenant.

The tenant testified that she got locked out of the subject rental property from around 8 p.m. to 10 p.m. on October 31, 2019. The tenant testified that she had keys to the deadbolt but not the door knob and the door knob someone got locked and she could not get into the property. The tenant testified that the landlord was showing the property and must have accidentally locked the door knob. The tenant testified that the landlord is responsible for her getting locked out. The tenant testified that she would have used the time she was locked out to clean and since the landlord is responsible for her being locked out, she is not responsible for the cleaning charges the landlord incurred.

Both parties agreed that the specific time the tenant was required to vacate the subject rental property on October 31, 2019 was not discussed.

The landlord testified that the cleaner's boyfriend charged her \$95.00 to haul all of the tenant's garbage to the dump and is seeking that amount from the tenant. The tenant testified that she did not recall leaving garbage behind.

The landlord testified that the tenant damaged a door hinge and jam and that she reduced her new tenants rent by \$164.00 on one occasion as compensation for the new tenant completing the repair.

The tenant testified that she did not damage the door hinge or jam.

## Analysis

### Condition Inspection Reports

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Section 24(2) of the *Act* states that the right of a landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not offer the tenant two opportunities to complete the condition inspection. Pursuant to section 17 of the *Residential Tenancy Act Regulations* (the "Regulations"), the second opportunity must be in writing.

Section 23 of the *Act* states:

**23** (1)The landlord and tenant together must inspect the condition of the rental unit on the day the tenant is entitled to possession of the rental unit or on another mutually agreed day.

(2)The landlord and tenant together must inspect the condition of the rental unit on or before the day the tenant starts keeping a pet or on another mutually agreed day, if

(a)the landlord permits the tenant to keep a pet on the residential property after the start of a tenancy, and

(b)a previous inspection was not completed under subsection (1).

(3)The landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection.

(4)The landlord must complete a condition inspection report in accordance with the regulations.

(5)Both the landlord and tenant must sign the condition inspection report and the landlord must give the tenant a copy of that report in accordance with the regulations.

(6)The landlord must make the inspection and complete and sign the report without the tenant if

- (a)the landlord has complied with subsection (3), and
- (b)the tenant does not participate on either occasion.

Section 20(1) of the Residential Tenancy Act Regulation states that a condition inspection report completed under section 23 or 35 of the Act must contain the following information:

- (a)the correct legal names of the landlord, the tenant and, if applicable, the tenant's agent;
- (b)the address of the rental unit being inspected;
- (c)the date on which the tenant is entitled to possession of the rental unit;
- (d)the address for service of the landlord;
- (e)the date of the condition inspection;
- (f)a statement of the state of repair and general condition of each room in the rental unit including, but not limited to, the following as applicable:
  - (i)entry;
  - (ii)living rooms;
  - (iii)kitchen;
  - (iv)dining room or eating area;
  - (v)stairs;
  - (vi)halls;
  - (vii)bathrooms;
  - (viii)bedrooms;
  - (ix)storage;
  - (x)basement or crawl space;
  - (xi)other rooms;
  - (xii)exterior, including balcony, patio and yard;

- (xiii)garage or parking area;
- (g)a statement of the state of repair and general condition of any floor or window coverings, appliances, furniture, fixtures, electrical outlets and electronic connections provided for the exclusive use of the tenant as part of the tenancy agreement;
- (h)any other items which the landlord and tenant agree should be included;
- (i)a statement identifying any damage or items in need of maintenance or repair;
- (j)appropriate space for the tenant to indicate agreement or disagreement with the landlord's assessment of any item of the condition of the rental unit and contents, and any additional comments;
- (k)the following statement, to be completed by the tenant:

I, .....

Tenant's name

☐ I agree that this report fairly represents the condition of the rental unit.

☐ I do not agree that this report fairly represents the condition of the rental unit, for the following reasons:

.....  
.....  
.....  
.....;

- (l)a space for the signature of both the landlord and tenant.

I find that section 10 of the tenancy agreement is not a move in condition inspection report made in accordance with section 23(4) of the *Act* and section 20(1) of the Regulation.

Since I find that the landlord did not follow the requirements of the *Act* regarding the joint move-in inspection and inspection report, I find that the landlord's eligibility to claim against the security deposit for damage arising out of the tenancy is extinguished.

### Security Deposit Doubling Provision

I find that service of the tenant's forwarding address was effected on the landlord on November 17, 2019, three days after its posting, in accordance with sections 88 and 90 of the *Act*.

Section 38 of the *Act* requires the landlord to either return the tenant's security deposit or file for dispute resolution for authorization to retain the deposit, within 15 days after the later of the end of a tenancy and the tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award, pursuant to section 38(6)(b) of the *Act*, equivalent to double the value of the security deposit.

Section C(3) of Policy Guideline 17 states that unless the tenants have specifically waived the doubling of the deposit, either on an application for the return of the deposit or at the hearing, the arbitrator will order the return of double the deposit if the landlord has claimed against the deposit for damage to the rental unit and the landlord's right to make such a claim has been extinguished under the *Act*.

In this case, while the landlord made an application to retain the tenant's security deposit within 15 days of receiving the tenant's forwarding address in writing, she is not entitled to claim against it due to the extinguishment provisions in section 24 of the *Act*. Therefore, the tenant is entitled to receive double her security deposit as per the below calculation:

$\$450.00 \text{ (security deposit)} * 2 \text{ (doubling provision)} = \$900.00 - \$55.00 \text{ (amount the landlord returned to the tenant)} = \$845.00$

### Cleaning and Garbage

Section 37(1) of the *Act* states that unless a landlord and tenant otherwise agree, the tenant must vacate the rental unit by 1 p.m. on the day the tenancy ends.

Section 37(2)(a) of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the photographic evidence of the landlord, the landlord's testimony, the text messages between the landlord and her cleaning lady and the photographs contained

therein, I find that the tenant left garbage at the subject rental property and did not leave it reasonably clean.

Pursuant to section 37(1) of the *Act*, I find that the tenant was required to vacate the property by 1:00 p.m. on October 31, 2019 and that subject rental property should have been cleaned prior to the lockout. I therefore find that regardless of who is at fault for the lockout, the tenant breached section 37(1) of the *Act* by failing to move out by 1:00 p.m. I therefore award the landlord the cost of cleaning the subject rental property and removing the garbage in the amount of \$255.00.

### Door Jam and Hinge

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

I find that the landlord has failed to prove the move in condition of the door jam and hinge as no move in condition inspection report was completed. I find that the landlord has failed to prove that the door jam/hinge was in worse condition at the end of the tenancy as compared to the beginning of the tenancy. The tenant denied damaging the door jam/hinge. The landlord has not met the required standard of proof. I therefore dismiss the landlord's claim for damage to the door jam/hinge.

As both parties were successful in their claims, I find that both parties are to share in the cost of the application fee. Pursuant to section 72 of the *Act*, I order the tenant to pay the landlord 50% of the \$100.00 filing fee, that being \$50.00.

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*.

### Conclusion

I issue a Monetary Order to the tenant under the following terms:



Item	Amount
Doubled Security Deposit	\$845.00
Less Cleaning fee	-\$160.00
Less Garbage removal fee	-\$90.00
Less Filing Fee	-\$50.00
<b>TOTAL</b>	<b>\$545.00</b>

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 01, 2020

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Residential Tenancy Branch